

REMARKS

Claims 25-45 are pending in the application.

Claims 25-45 have been rejected.

Claim 30 and 34 have been amended, as set forth herein. Claim 34 has been amended to correct an informality noted by the Examiner.

I. **DOUBLE PATENTING REJECTIONS**

Claims 25-29 and 35-45 were rejected based on nonstatutory obviousness-type double patenting over Claims 6-9 of U.S. Patent No. 6,715,099.

Applicant will timely and properly file a terminal disclaimer when this rejection is the only remaining rejection outstanding for these claims.

II. **REJECTION UNDER 35 U.S.C. § 102**

Claims 25-27, 30-31, 34-37, 39, 42 and 44 were rejected under 35 U.S.C. § 102(b) as being anticipated by Fulton (US 5,715,386). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is

found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

With respect to independent Claims 25, 34, 35 and 39, the Office Action argues that the Fulton reference, at Col. 20, lines 40-43, describes a second logical pipe (or logical means) for transferring high-availability data over the physical pipe. For ease of reference, the cited portion of Fulton is set forth below:

. . . Of course, the libft routines can be used to save state that will be needed when the application is restarted. To make sure that the process is really terminated, a SIGKILL signal is sent to the process [elapsed time] after the second signal<signal> is sent to the process. Fulton, Col. 20, lines 40-45.

This cited text simply does not describe a second logical pipe (in addition to a first logical pipe) over a physical pipe for transferring the high-availability data. Moreover, Fulton does not appear to describe or teach any logical pipes, let alone two logical pipes, over a physical channel (i.e., one logical pipe for operational status information and another logical pipe for high-availability information). Therefore, Fulton fails to disclose each and every element as they are arranged in Applicant's independent Claims 25, 34, 35 and 39 (and their dependent claims).

Applicant has amended independent Claim 30 to recite the network interface card implementing a first logical pipe for transferring data over the physical pipe and a second logical pipe for transferring high-availability information over the physical pipe. For the reasons set forth above, Fulton fails to disclose each and every element as they are arranged in Applicant's independent Claim 30 (and its dependent claims).

With respect to independent Claims 42 and 44, the Fulton reference fails to describe monitoring a transfer complete marker - as described and recited in Applicant's specification and claims. Fulton's termination timer does not indicate a data transfer is complete. In fact, Fulton describes "waiting a period of time before beginning to respond to processes which have been terminated. The wait guarantees that all processes in a group which must be terminated together will be terminated before" restarting the application. Fulton, Col. 21, lines 15-20. Clearly Fulton is referring to termination of processes, and not monitoring a transfer complete relating to the transfer of data. Therefore, Fulton fails to disclose each and every element as they are arranged in Applicant's independent Claims 42 and 44 (and their dependent claims).

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 25-27, 30-31, 34-37, 39, 42 and 44.

III. REJECTION UNDER 35 U.S.C. § 103

Claims 28-29, 32-33, 38, 40, 41, 43 and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fulton (US 5,715,386) in view of Futral (US 6,081,851). The rejection is respectfully traversed.

For the reasons, set forth above, the Office Action has failed to establish a prima facie case of obviousness in view of the shortcomings of the Fulton reference. Futral fails to cure the deficiencies noted in Fulton. Moreover, Futral merely describes programming a remote DMA engine from a destination for data transfer between the memory and the destination. There is no disclosure,

teaching or suggestion in Fulton or Futral to use Futral's described DMA transfers in the manner and for the purposes described in Applicant's specification. Therefore, the Office Action has failed to establish a prima facie case of obviousness.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejection of Claims 28-29, 32-33, 38, 40, 41, 43 and 45.

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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